IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8369 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

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Appearance:

1. Special Civil Application No. 8369 of 2000

MR AM DAGALI FOR MS ROOPAL R PATEL for Petitioner No. 1

MR ASHISH M DAGLI for Petitioner No. 1

MR HN BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 15/03/2002

ORAL JUDGEMENT

#. Heard Mr.A.M.Dagali, learned advocate appearing on behalf of the petitioner Corporation and Mr.H.N.Brambhatt, learned advocate for respondent workman.

#. In the present petition, the petitioner Corporation has challenged the award passed by the Labour Court, Junagadh in Reference No.115 / 1995 dated 25th January, 2000, wherein the dismissal order dated 24th November, 1992 has been set aside and granted reinstatement with continuity of service and 50 % backwages with effect from 1st September, 1995. This Court has issued RULE and granted stay on 31st July, 2000. The Stay granted by this Court is operating till date. Learned advocate Mr.Dagali on behalf of the petitioner Corporation has submitted that from the respondent conductor it was found that the respondent conductor was having personal cash of Rs.107/- excess at the time of checking. Therefore, chargesheet was served on the respondent conductor and after departmental inquiry proceeding, the respondent conductor was dismissed from service on 24th November, 1990. Learned advocate Mr.Dagali has also submitted that past record of the respondent conductor is also not good and he committed misconduct of various kinds in past. He has also submitted that the respondent workman has filed Civil Suit challenging the dismissal order before the Civil Court, Junagadh. It is further pointed out that the respondent conductor was on route on 14th February, 1992 in Veraval Depot and at that time, his personal cash was checked by the checking staff between 16.30 Hrs to 16.45 Hrs and on such occasion Rs.107/- was found excess in the cash with the respondent workman. In departmental inquiry proceedings, reasonable opportunity was given to the respondent conductor and thereafter, dismissal order has been passed. He, therefore, submits that the labour court has committed gross error in exercising the powers under Section 11-A of the Industrial Disputes Act, 1947 granting reinstatement with 50 % backwages. Mr.Dagali, learned advocate has also submitted that serious misconduct to have excess personal cash, was committed by the respondent workman and therefore, the punishment of dismissal is legal and valid.

#. Learned advocate Mr.Brambhatt appearing on behalf of the respondent workman has submitted that the bus of the respondent workman was not checked by the checking staff but after completion of the work, he deposited the cash amount with the cashier and thereafter his personal cash was checked by the checking staff and it was found that Rs.107/- excess in personal cash. However, this charge has been explained by the respondent workman in the explanation tendered by him and there was no other misconduct committed by the respondent workman and therefore, the dismissal order is unjust and rightly interfered with by the labour court and granted

reinstatement with 50 % backwages and as such, no error has been committed by the labour court and hence, no interference of this Court is called for while exercising the power under Article 226 and 227 of the Constitution of India.

#. I have considered submissions of the learned advocates for the parties. Before the labour court, statement of claim was filed by the respondent workman and written statement was filed by the petitioner Corporation vide Exh.6. Thereafter, certain documents were produced by both the parties including the default card of the respondent workman. Thereafter, the respondent workman has submitted Purshis under Section 11A of the I.D.Act pointing out that legality and validity of the departmental inquiry is not challenged but legality and validity of the finding is challenged by the workman. It was submitted before the labour court that looking to the misconduct alleged against the workman, the punishment of dismissal is highly unjustified and therefore same required to be modified accordingly. Thereafter the respondent workman was examined vide Exh.28 and he was cross examined by the petitioner Corporation. However, the petitioner Corporation has not led any oral evidence before the labour court. Thereafter, the labour court has framed the issues; whether departmental inquiry proceeding is legal and valid or not, whether charge is proved against the respondent workman or not; and whether the punishment imposed on the respondent workman is disproportionate or not ? In respect of first issue, the labour court has come to the conclusion that the departmental inquiry proceeding is legal and valid but in respect of second issue, the labour court has come to the conclusion that after considering the evidence on record, the charge levelled against the respondent conductor has not found proved on the basis of the evidence which was recorded in the departmental inquiry. So far the third issue, the labour court has come to the conclusion that punishment imposed by the petitioner Corporation looking to the gravity of misconduct seems to be unjustified. The labour court has considered the past record, wherein, in all 22 defaults found to have committed by the respondent conductor by the respondent workman. Therefore, considering all these aspects of the matter, the labor court ultimately passed the award granting reinstatement with continuity of service and 50 % backwages from the date of Reference 9th January, 1995.

#. Thus, question is that whether the labour court is justified to grant 50 % backwages from the date of

Reference or not ? In respect of grant of relief for reinstatement with continuity of service, according to my opinion, the labour court has rightly exercised the powers under Section 11A of the I.D.Act, 1947 and therefore, this Court is not inclined to disturb said relief. But this Court is only examining the question of grant of 50 % backwages with effect from 9th January, 1995. According to the record, the respondent conductor has committed 22 defaults in past. The default card was produced at Exh.15 which reflects that in past, once the workman was dismissed also. Therefore, considering these aspects and looking to the gravity of the misconduct, according to my opinion, 50 % backwages of the interim period granted from the date of Reference seems to be on higher side and if the same is reduced to 25 % backwages of the interim period, will meet the ends of justice between the parties. Therefore, the award impugned in this petition requires to be modified in the following terms.

#. In view of above discussion, present petition deserves to be allowed partly. Accordingly, this petition is allowed partly. The award passed by the labour court, Junagadh in Reference No.115/ 1995 dated 25th January, 2000 is modified qua backwages only and accordingly the respondent workman is entitled to 25 % backwages with 1st September, 1995 instead of 50 % backwages as awarded by the labour court concerned.

#. Learned advocate Mr.Brambhatt on behalf of the respondent workman has submitted that he is not aware as to whether the respondent workman has been reinstated by the petitioner Corporation in pursuance of the award in question or not. Mr.Brambhatt, learned advocate is also not aware of the fact that as to whether the workman has been paid benefits under Section 17-B of the I.D.Act or not. In above view of the matter, it is directed to the petitioner Corporation that if the respondent workman if so far not reinstated in service, then the workman shall be reinstated in service within period of one month from the date of receiving the copy of this order. The petitioner Corporation is further directed to pay full wages from 25th January, 2000 till actual date of reinstatement of the respondent workman after adjusting the wages under Section 17-B of the I.D.Act, if paid. The amount towards wages as directed above, shall have to be paid by the petitioner to the workman concerned within period of three months from the date of receiving the copy of this order.

Rule is made absolute to the extent indicated

hereinabove accordingly. No order as to costs.

Direct Service is permitted to respondent workman.

Date : 15-3-2002 [H.K.Rathod, J.]

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